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TRANSMITTAL LETTER
(General - Patent Pending)

Docket No. 1700
112703-17

In Re Application Of: Patel et al.

Serial No. 09/648,033	Filing Date August 25, 2000	Examiner A. Corbin	Group Art Unit 1761
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Title:

ENVIRONMENTALLY FRIENDLY CHEWING GUMS INCLUDING LECITHIN

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Appellants: Patel et al.
Appl. No.: 09/648,033
Filed: August 25, 2000
Title: ENVIRONMENTALLY FRIENDLY CHEWING GUMS INCLUDING
LECITHIN
Art Unit: 1761
Examiner: A. Corbin
Docket No.: 112703-17

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPELLANTS' REPLY BRIEF

Dear Sir:

I. INTRODUCTION

This Reply Brief is submitted in response to the Examiner's Answer mailed January 14, 2004. Appellants respectfully submit that the Examiner's Answer demonstrates that the final rejection is improper and should be reversed by this Board. Appellants have attempted to set forth below why they believe that the Examiner's Answer in and of itself demonstrates the rejections are not proper. For the sake of brevity, Appellants have attempted not to repeat the arguments set forth in Appellants' Appeal Brief and therefore incorporate same by reference herein.

**II. THE PRINCIPAL REFERENCE CHERUKURI '615 DEMONSTRATES THE NON-
OBVIOUSNESS OF APPELLANTS' CLAIMED INVENTION**

The principal reference relied upon by the Patent Office is *Cherukuri*. Indeed, the principal portion of *Cherukuri* relied upon is run D. Appellants pointed out that *Cherukuri* run D demonstrates that Appellants' claimed invention is neither suggested nor disclosed by *Cherukuri*. In this regard, Appellants pointed out that *Cherukuri* run D states as follows:

The run D results showed an increase in plasticizing that was so severe that the gum was extremely tacky and the gum could not be chewed. The gum exhibited disintegration.

See *Cherukuri* '615 at column 9, lines 44-47.

The Examiner's Answer states "The negative remark about run D mentioned in column 9, lines 44-47 of *Cherukuri et al.* does not alter the fact that Appellants' composition is clearly suggested by the teachings of *Cherukuri et al.*" Appellants respectfully submit that the opposite is true; these remarks demonstrate that Appellants' claimed invention is not suggested by *Cherukuri*.

Run D is a chewing gum composition that does not include filler and includes glyceryl monostearate. Appellants' claimed invention requires a chewing gum composition not including filler and including lecithin. One viewing *Cherukuri* would be led to the conclusion that a chewing gum composition that does not include filler does not work. Thus, one viewing *Cherukuri* for what it teaches would not be led to modify the emulsifier of *Cherukuri* to include lecithin. One viewing *Cherukuri* would not use a chewing gum composition that did not include filler.

The Examiner's Answer, it is respectfully submitted, demonstrates that the rejection is based on a hindsight reconstruction of the claimed invention and not based on what the references teach.

III. THE PATENT OFFICE HAS POINTED TO NO SUGGESTION IN THE REFERENCES THAT A CHEWING GUM NOT INCLUDING FILLER AND INCLUDING LECITHIN SHOULD BE CONSTRUCTED

As demonstrated by the Examiner's Answer, the gist of the rejection is that one can choose separate components from the multitude of possible ingredients listed in each of the disclosures and piece together Appellants' claimed invention. This is not the test for obviousness. The question is whether or not the references suggest the claimed invention.

Each of the references that are relied upon to reject the claims suggest the use of filler. Clearly the references do not suggest a chewing gum composition not including filler and including lecithin, especially since the references disclose up to 60 percent of the chewing gum composition contain filler (see *D'Amelia*). Moreover, the rejection does not appear well founded

in view of the fact that when lecithin is disclosed, if at all, it is in a litany of possible ingredients. The question is would one skilled in the art viewing the cited references achieve Appellants' claimed invention?

Appellants believe the sole motivation for the combination is as set forth in Examiner's Answer "Lecithin is a viable alternative to each of the other emulsifiers described in each primary reference." See page 3, lines 5-6. The fact that lecithin is a viable alternative is not determinative of obviousness. The question is, would one skilled in the art have been motivated to use lecithin in a chewing gum composition not including filler? Appellants respectfully submit that they would not.

IV. CONCLUSION

For the foregoing reasons, Appellants respectfully request that this Board reverse the Examiner's rejection of the pending claims.

Respectfully submitted,

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